

# OUTRAGEOUS VIOLATIONS: ENABLING STUDENTS TO INTERPRET NINETEENTH CENTURY NEWSPAPER REPORTS OF SEXUAL ASSAULT AND RAPE

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## **Abstract:**

This article is divided into two parts: the first highlights some of the difficulties and limitations for students and tutors who wish to explore the historiography of rape and sexual assault. In particular it addresses the problematic issue of accessing and interpreting the official records of such proceedings in the criminal courts. As an alternative it is suggested that nineteenth century newspaper reports written by professional lawyer-reporters can provide an effective substitute and can be justified as a primary research source. The second part offers a series of four case studies of sexual assaults as reported in *The Times* newspaper which students can easily access through the digital archive and analyse. These are presented with observations on how students might be directed to read and interpret the reports together with suggested learning points to enable them to understand how the criminal law and legal process operated in practice, and the real life implications and consequences for the parties involved.

**Keywords:** teaching crime history, case studies, rape, sexual assault, using Victorian newspapers

## **Introduction**

Based on over 20 years' experience of historico-legal research analysing sex crimes from the mid-nineteenth century to the present day, and teaching the law relating to sexual offences to final year law and criminology undergraduate students, this paper offers some suggestions and observations regarding the teaching of crime history, specifically in relation to the crimes of rape and sexual assault. The article comprises two parts: the first highlights some of the problems and limitations that tutors should consider and address in relation to the identification of suitable primary source material and how this can be overcome by substituting reliable newspaper reportage. The second focuses on four nineteenth century case studies utilising newspaper reports of real life court proceedings published in *The Times* to demonstrate how students can be directed to engage with, and interpret, representations and

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narratives of Victorian prosecutions of rape and sexual assault. The source analysis approach presented in these sample case studies is intended to stimulate ideas for student centred learning activities that can be adapted to the tutor's respective discipline and should not be regarded as archetypal or definitive.<sup>2</sup> The models should be suitable for those studying crime histories or the history of crime within law, socio-legal studies, history, criminology, and gender studies programmes. They are also more likely to be of interest to those who favour a more contextualized rather than doctrinal approach, and who believe that the criminal law and its processes should be examined not only *from* a legal and historical perspective but also *within* its legal and historical context. As Charlesworth asserts, 'Such contextualization interprets the past not for its own sake but rather to allow the significance and implications of current events to be more adequately understood than would otherwise be the case.'<sup>3</sup>

Drawing student attention to the example case studies highlighted can facilitate their awareness and understanding of the more difficult and sensitive aspects of crime historiography and the real life experiences of the individuals involved. Such strategies can realise the adoption and development of a more culturally inclusive teaching practice as promoted by the Higher Education Academy Teaching Development Framework, ideally 'fostering an independence of learning in which students develop the ability to discover and reconstruct knowledge themselves.'<sup>4</sup> It can enable students to compare and contrast contemporary and historical approaches to the prosecution of sexual offences, develop more effective independent learning and research skills, and encourage them to think about and confront their own understandings and perceived prejudices about gender and sex. The case studies are therefore designed to intensify the student experience of genuinely engaging with the past, allowing learners to empathise with the experiences of real life victims/complainants and accused/defendants, thereby enhancing their 'historical imagination'.<sup>5</sup> Analysis of these trials can also enable them to develop their understanding of the decision making process including the tactics

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<sup>2</sup> The author would be delighted to hear of the experiences of colleagues who experiment with or trial the case study approach suggested.

<sup>3</sup> Lorie Charlesworth, 'On Historical Contextualisation: Some Critical Socio-Legal Reflections', *Crimes and Misdemeanours*, 1(1) (2007) 1-40, p.9.

<sup>4</sup> Greg Light, Roy Cox and Susanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional* (2<sup>nd</sup> edn., Sage, 2009), p.11.

<sup>5</sup> John Fielding, 'Engaging Students in Learning History', *Canadian Studies* (Special Issue New Approaches to Teaching History), 39 (2) (2005), [http://www.educ.ualberta.ca/css/Css\\_39\\_2/ARFielding\\_engaging\\_students.htm](http://www.educ.ualberta.ca/css/Css_39_2/ARFielding_engaging_students.htm)

employed by legal counsel and why certain issues, legal and/or cultural, could influence jurors and judges. Each extract is introduced by way of a short summary of the case followed by some suggested themes and interpretive guidance to help students read and understand the report, ideas for specific learning points and objectives that they can be directed to investigate further or think about, and potential limitations and factors that both they and tutors might need to be aware of and take into account.

## 1 Identifying Suitable Research Content

Hampton-Reeves et al concluded that students in general have become more

anxious about identifying appropriate research content ... expect research content to be immediately accessible, ideally online, and will not pursue other methods of accessing it ... [and typically] find too much information and do not know how to manage it effectively.<sup>6</sup>

Undertaking qualitative historico-legal research on the subject of rape and sexual violence can be even more problematic. The subject matter is likely to be of a highly sensitive nature and may be potentially distressing for students to read, equally it can also be difficult for tutors to convey and articulate. Culturally, from the nineteenth century onwards, the increasing 'desexualization' of the public discourse and rise of respectability meant that these were not topics that could be more broadly or overtly discussed in genteel society. Clark confirms that there was a much greater explicitness of expression in pre-Victorian cases and Walkowitz comments that 'Where Victorians talked sex, they mostly focused on sexual danger, or the proliferation of sexual practices outside the sanctity of the home, disengaged from the procreation act.'<sup>7</sup> Thus rather than students being overwhelmed with information they are more likely to be disconcerted about the scarcity of usable primary material and data available (such as transcripts and reports of court proceedings and trials of sex crimes) in the official historical record. And what does exist is often not easily accessible to them. Wiener confirms that rape was 'barely visible' in court indictments from the mid-sixteenth century to the end of the eighteenth century with just 203 indictments at the Old Bailey (directly accessible at the [Old Bailey Online](#) resource)

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<sup>6</sup> Stuart Hampton-Reeves, Claire Mashiter, Jonathan Westaway, Peter Lumsden, Helen Day, Helen Hewertson and Anna Hart, *Students' Use of Research Content in Teaching and Learning, Report for JISC* (UCLAN, 2009), p.48.

<sup>7</sup> Anna Clark, *Women's Silence Men's Violence. Sexual Assault in England 1770-1845* (Pandora, 1987), ch.3; Judith Walkowitz, 'Dangerous Sexualities,' in Genevieve Fraisse and Michelle Perrot (eds.) *A History of Women in the West* (Harvard University Press, 1993), p.370.

from 1730 to 1800.<sup>8</sup> Garthine Walker and Julie Gammon have usefully brought much of this pre-nineteenth century historiography to our attention.<sup>9</sup> In addition there is material available in the Assize circuit records but series are often incomplete and more suitable for intensive localised studies such as those undertaken for the early part of the nineteenth century by D'Cruze for the North-West<sup>10</sup> and Conley in Kent.<sup>11</sup>

Further difficulties in accessing such relatively scant primary sources emanate from the increasing trend in the early nineteenth century to censure any sexually explicit detail presented to the court in depositions, testimonies, cross-examination etc.. The reproduction and publication of court transcripts of trials of rape and sexual assault was expurgated on the grounds that such narratives constituted 'indecent' material. As Anna Clark found, from 1796 the Old Bailey started to suppress its official publication of transcripts of sexual crimes and few rape depositions survive in the Assize records post 1830.<sup>12</sup> It was deemed not to be in the public interest to allow access to such information because of the perceived danger that its sexual nature would be utilized to undermine the Victorian ideal of superior morality and respectability.

Statistical information also presents difficulties as sexual offences were often not segregated as a specific category but grouped together with other non-sexual assaults and offences against the person generically labelled as 'Crimes of Moral Outrage'.<sup>13</sup> While case disposals can be tracked through court registers, police records and yearbooks providing basic factual and legal information identifying defendants and witnesses, the nature of the indictment, charge or summons, and

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<sup>8</sup> Martin Wiener, *Men of Blood, Violence, Manliness and Criminal Justice in Victorian England* (Cambridge University Press, 2004), pp.77-78.

<sup>9</sup> For example, see Garthine Walker, 'Rape, Acquittal and Culpability in Popular Crime Reports in England, c.1670–c.1750', *Past and Present*, 220(1) (2013), pp.115-142; Garthine Walker, 'Everyman or a Monster? The Rapist in Early Modern England, c.1600-1750' *History Workshop Journal*, 76(1) (2013), pp.5-31; J.D. Gammon, *Ravishment and Ruin, The Construction of Stories of Sexual Violence in England 1640-1820* (Unpublished PhD Exeter University, 2000); Julie Gammon, "'A Denial of Innocence": female juvenile victims of rape and the English legal system in the eighteenth century,' in A. Fletcher and S. Husseys, (eds.) *Childhood in Question: Children, Parents and the State* (Manchester University Press, 1999), pp.74-95. Also see Aparna Gollapudi, 'The Disordered Fundament: Sexual Violence on Boys and Sodomy Trial Narratives in the *Old Bailey Proceedings*,' in Anne Greenfield (ed.), *Interpreting Sexual Violence 1660–1800* (Pickering and Chatto, 2013), ch.4.

<sup>10</sup> Shani D'Cruze, *Crimes of Outrage, Sex, Violence and Victorian Working Women* (UCL Press, 1998).

<sup>11</sup> Carolyn Conley, 'Rape and Justice', *Victorian Studies*, 29 (1986), pp.519-536; *The Unwritten Law; Criminal Justice in Victorian Kent* (Oxford University Press, 1991).

<sup>12</sup> Clark, *Women's Silence Men's Violence*.

<sup>13</sup> See statistical analysis in J. Holt Schooling, 'Crime', *Pall Mall Magazine*, 15 (1898) p.244.

decisions of the judge and jury; these rarely provide any rich detail of the more contextual, cultural and legal aspects of the case. For example, the factual narrative of the violation, the arguments presented by counsel, style of questioning and cross-examination, specific judicial opinion and guidance offered to the court and jury, and factors that influenced acquittal or conviction are fundamental in enhancing students' knowledge and understanding of how the law and the criminal justice process operated on an everyday basis, and the resultant implications and consequences for the parties concerned.

Other official primary sources such as the Law Reports and Parliamentary Papers (both electronically accessible<sup>14</sup>) are also likely to contain meagre offerings to fill in the gaps from the mid-nineteenth century to the mid-twentieth. From the late-nineteenth century to the 1970s only a handful of cases on sexual assaults were appealed to the higher courts on points of law and, until the Criminal Appeal Act 1907, rarely against sentence, thereby reported cases on sexual offences feature only intermittently in the published Law Reports. In contrast, from the start of the twenty-first century the modern Court of Appeal (Criminal Division) annually deals with a significant number of appeals involving the provisions of the Sexual Offences Act 2003: mostly from the defendant against sentence or challenging the interpretation of the legislation by the trial judge. There is also evidence of an incremental use of section 36 Criminal Justice Act 1988 which permits the prosecution to seek a review by way of an Attorney General's reference on the grounds that the original sentence was too lenient. Thus the existence of useable detail available in contemporary appeal reports as the facts, legal arguments and decisions of the trial at first instance are rehearsed and reviewed by the appeal court judges, is largely absent in the equivalent historical record.

Similarly, until former Home Secretary David Blunkett commissioned the extensive government consultation paper that informed the enactment of the Sexual Offences Act 2003,<sup>15</sup> Parliamentary Reports offer marginal assistance. Historically, such inquiries tended to focus more on the debates and issues concerning child and adult prostitution and determining the age of protection or consent as it is now called,<sup>16</sup>

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<sup>14</sup> Appeal reports via legal search engines such as Westlaw and LexisNexis; Parliamentary Papers see House of Commons Parliamentary Papers available from Chadwyck Healey.

<sup>15</sup> Home Office, *Setting the Boundaries: Reforming the Law on Sexual Offences* (2000).

<sup>16</sup> For academic commentary see, for example, Donald Thomas, *The Victorian Underworld* (John Murray, 1998); Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in late Victorian London* (University of Chicago Press, 1992); Louise Jackson, *Child Sexual*

such as the Criminal Law Amendment Act 1885 and its on-going contestation during the next 40 years producing numerous revised Bills and reports<sup>17</sup> or the ubiquitous Wolfenden Report published in 1964.<sup>18</sup> Thus in terms of the prosecution of substantive sexual offences these are of relatively limited value. It also needs to be acknowledged that in addition to the number of actual prosecutions that are largely 'invisible' in the official historical record, for a variety of reasons many more cases were reported but never proceeded with.

## 2 Justifying Newspaper Reports as a Credible Source

There is, however, one available and accessible source that can offer an authentic substitute, particularly for the second half of the nineteenth century, and even in respect of cases heard at the Old Bailey. Newspaper reportage, provided researchers and students are cognizant of its potential limitations, can be utilised very effectively as a supplementary resource and teaching aid, especially now that more of it is available through digitization.<sup>19</sup> Largely because of the difficulties of accessing and reading (on microfiche at the British Library) Victorian newspapers before digitization, until recently much scholarship on the media reportage of sex crimes has focussed on the modern era. For example, Soothill has undertaken a considerable amount of work tracking newspaper reportage of rape and sexual assault cases both quantitatively and qualitatively for the third quartile of the twentieth century.<sup>20</sup> Wykes' feminist review, *News, Crime and Culture*, of sex and violence reported in the news in the 1980s and 1990s, and sexual identification, pornography and prostitution in the 1980s is also significant. Writing from a legal and criminological perspective she draws on some late-twentieth century historical references noting that when the press directly reproduce some of the more misogynistic and stereotypical comments made by the less enlightened judiciary, the

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*Abuse in Victorian England* (Routledge, 2000); Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality 1885-1914* (Penguin, 1995); Kevin Porter and Jeffrey Weeks, (eds.) *Between the Acts: Lives of Homosexual Men 1885-1967* (Routledge, 1991); Matthew Waite, *The Age of Consent: Young People, Sexuality and Citizenship* (Palgrave, 2005).

<sup>17</sup> Nearly two dozen Bills were presented between the enactment of the Criminal Law Amendment Act 1885 and final ratification of 16 years as the age of consent for girls only in the Criminal Law Amendment Act 1922.

<sup>18</sup> Departmental Committee on Homosexual Offences and Prostitution, *Report of the Committee on Homosexual Offences and Prostitution* (HMSO, 1957).

<sup>19</sup> See Adrian Bingham, 'The Digitization of Newspaper Archives: Opportunities and Challenges for Historians', *Twentieth Century British History*, 21/2 (2010), pp.225-231.

<sup>20</sup> Keith Soothill, and Chris Grover, 'Changes in the Newspaper Reporting of Rape Trials Since the Second World War,' *Home Office Research Bulletin* 37, (1995) 45-49; Keith Soothill, Sylvia Walby, *Sex Crime in the News* (Routledge, 1991) p.199; Soothill et al, 'Judges, the Media and Rape,' *Journal of Law and Society*, 17 (1990), pp.211-33.

news media 'often actively reproduced the myth that "women ask for it"'.<sup>21</sup> In response to the leading question of why the issue of sex offending so dominates modern media discourse, Greer's *Sex Crime and the Media* provides a useful reference point. He also investigates how the conflicts between the various professionals and non-professionals involved in sex cases are manipulated and exploited within the medium of the press as part of the construction of the news-making process.<sup>22</sup> And for the early to mid-twentieth century, Bingham has effectively and extensively covered sex, scandal, sensationalism and their representation in the popular press in terms of news culture and the domination of the New Journalism tabloids: namely the *Express*, the *Mirror* (both available electronically albeit via subscription) and the *Mail*.<sup>23</sup>

As an exploitable archive source for students, compared to the twentieth century press, Victorian newspaper coverage of criminal trials can provide a substantial amount of authentic reference material. Crime reportage and crime news often included considerable detail about the prosecution and disposal of cases of sexual assault at the Central Criminal Court (Old Bailey), Assizes and Quarter Sessions, and most usefully, and most under interrogated, at the summary and police court level.<sup>24</sup> National, provincial and local newspapers published thousands of summaries of criminal trials, committals and hearings often reproducing verbatim the statements made in court. Typically covering a whole page, or even two, of a broadsheet with headlines such as 'Crime Intelligence', 'Crime News', 'News from the Courts' and 'Police News', a selection of cases was grouped together and organized according to a particular circuit or geographical location. For example, news from the West Country, Home Circuit, Oxford Assizes, Middlesex Sessions, the internal courts of the Old Bailey, or the London police courts. At the least, most newspaper reports provide basic factual information identifying the parties concerned including their

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<sup>21</sup> Maggie Wykes, *News, Crime and Culture* (Pluto Press, 2001), p.146.

<sup>22</sup> Chris Greer, *Sex Crime and the Media: Sex Offending and the Press in a Divided Society* (Willan, 2003) though his analysis is limited to the Northern Ireland press; also see Jenny Kitzinger, 'Rape and the Media' in Miranda Horvath and Jennifer Brown (eds.) *Rape Challenging Contemporary Thinking* (Willan 2009), pp.74-98.

<sup>23</sup> Adrian Bingham, *Family Newspapers Sex Private Life and the British Popular Press 1918-1978* (Oxford University Press, 2009); Adrian Bingham, *Gender, Modernity and the Popular Press in Interwar Britain* (Clarendon Press, 2004).

<sup>24</sup> Kim Stevenson, 'Unearthing the Realities of Rape: Utilising Victorian Newspaper Reportage to Fill in the Contextual Gaps,' *Liverpool Law Review*, 28/3 (2007), pp.405-423; Joanne Jones, "'She resisted with all her might": Sexual Violence Against Women in Late Nineteenth Century Manchester and the Local Press,' in Shani D'Cruze (ed.), *Everyday Violence in Britain 1850-1950 Gender and Class* (Pearson, 2000).

name, address, status, employment, background, ethnicity, the legal professionals involved, the court hearing and decision.

One of the reasons why much Victorian newspaper reportage is particularly valuable, and reasonably justifiable as an authentic source, is the involvement of lawyers in the production of this crime news adding integrity to the content and formulation of such coverage due to their legal knowledge and understanding.<sup>25</sup> Increasingly, the Victorian newspaper industry recognized that it was, in the public interest, their responsibility to support and promote the rule of law. The obvious way to achieve this, and attract interested readers, was through the recruitment and commissioning of lawyer reporters, primarily barristers, who had the necessary legal expertise and interest to write about and report on the work of the law courts. From the late 1830s, *The Times* led the way (and still maintains its reputation today in this regard though the legal content is now much reduced) by increasing its coverage and quality of the law and legal issues making the paper more informed and informative, other national papers like the *Daily Telegraph*, *News of the World*, *Pall Mall Gazette* and *Morning Chronicle* followed suit increasing the amount of space devoted to crime reports and creating a new genre. The use of penny-a-liners, literally paid per line of text, was dispensed with for crime reportage as editors realised that the public wanted to read accurate reports about the events as they happened *in* the courtroom - rather than simply the trial outcome as a matter of record.

From the 1850s trainee and experienced barristers who had easy access to the courts and the circuits were recruited as lawyer-reporters who, when not advocating their own cases, would sit in the magistrates courts and Assizes on a daily basis transcribing what they saw and heard to provide a legally accurate 'true crime' narrative.<sup>26</sup> By definition they were reporters who literally recorded the specific details of a case as opposed to journalists who typically would write from a much broader and generalized perspective offering individual opinion and reflective commentary. By the mid-century, the use of lawyer-reporters had expanded rapidly, in 1867 'three out of every five reporters attached to our chief London newspapers are Inns of Court

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<sup>25</sup> See Judith Rowbotham, Kim Stevenson and Samantha Pegg, *Crime News in Modern Britain: Press Reporting and Responsibility 1850-2010* (Palgrave Macmillan, 2013), especially pp.26-28.

<sup>26</sup> *Ibid*, see chs.1 and 2 for more detail and examples of lawyers involved with the press such as Frederic Rogers and Mr Cooke Evans (*The Times*), Mr HT Cole QC (*Morning Chronicle*) and John Forster, Robert Campbell, E F Pigott, Serjeant Spankie, Lord Herschell, Lord Brougham, Lord Bampton, Fitzjames Stephen, Dickens etc.



men'.<sup>27</sup> What the lawyer-reporters offered to newspaper editors and proprietors was their role as intermediaries able to translate the seemingly impenetrable and incomprehensible science of the law, legal discourse and criminal justice procedures, into a more accessible format for an increasingly literate popular readership. Barristers were keen to supplement their income in this way as though increasingly counsel were employed in the magistrates and police courts to prosecute offenders and, particularly in cases of assault and sexual assault to represent defendants, the profession was largely oversubscribed.

As the century progressed and newspapers like the *Illustrated (London) Police News* adopted more visual and textual representations to sensationalise their crime narratives, the shift to a more modern style of 'entertaining' journalism crept in. Most national broadsheet titles maintained a more balanced style of crime reportage but gradually lawyer-reporters were replaced by professional journalists and, with the introduction of the New Journalism at the start of the twentieth century, the tabloid press in particular was more interested in recruiting crime reporters to replace lawyer-reporters.<sup>28</sup> The demise of detailed and reliable everyday crime reports is clearly evident as editors and the public (parasitically feeding off each other) demanded ever more sensationalist news stories, especially murder trials and the likely imposition of the death penalty. Even in *The Times*, from the 1900s on, only a few reports of rape or indecent assault appear, and those that do tend to be very brief without the rich detail provided in Victorian reports as to the identities of the parties involved including the judge and counsel, actual and specific details of the sexual offence perpetrated, defences claimed, evidence presented and testimony given. As far as the law is concerned they are even sparser in terms of articulating the legal arguments and issues advocated, summarising the outcome of guilt or acquittal rather than accurately reporting the trial narrative.<sup>29</sup> References to rape rarely appear in the by-lines or text (especially in the early tabloid press) and so keyword searching can produce some disappointing results, and typically only the more unusual cases were reported. Instead the reader has to comb through the Central Criminal Court summaries of *The Times* or download full pages of the *Express* and *Mirror*.

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<sup>27</sup> Ibid p.42 citing J.C. Jeaffreson, *A Book About Lawyers* (Hurst and Blackett, 1867), p.370.

<sup>28</sup> Ibid, see chapters 3 and 4.

<sup>29</sup> See, for example, *The Times*, CENTRAL CRIMINAL COURT, for 1 Nov 1900; 18 Sep, 20 Dec 1901; 15, 16 Sep 1903; Sep 1904. The Assizes. Western Circuit, 20 Jan 1902. County of London Sessions, 14 Jun 1902. Police (Law) 19 Aug 19 1902; 22 Apr 1903; and unusually a by-line - 'Woman Thrown Out of Train', *The Times*, 30 May 1911.

Given nineteenth century concerns about immorality the Victorian press tempered its representation of sexual crimes to an extent to promote its respectability and responsibility. The Victorian broadsheet habitually adopted a notably repressive style that alerted its readership immediately to any cases that might be 'too disgusting' to reproduce in full; unlike the modern tabloid press which is more than willing to include any amount of salacious detail to attract its readership. The language used in these reports therefore needs to be carefully construed and interpreted as at first glance it would appear to be so neutered, ambiguous and anodyne as to be impossible to decipher or usefully exploit. To maintain a respectable discourse certain linguistic codes and euphemisms were invoked to disguise sexually explicit material and descriptions including double-entendres, contradictions and metaphors. For example, the word 'rape' hardly ever appears except to define the indictment; instead defendants 'effected their purpose,' 'committed the outrage' or 'violated the person.' Victims 'were violated,' 'fainted' or 'their person was bruised.' Such euphemistic metaphors and sanitized language both protected public morals and the individual morality of those involved in the case – not just the complainant but also jurors and legal professionals – as well as those reporting it, allowing all to express the nature of the violation without actually stating the fact of penetration. Mostly such expressions were generally understood by Victorian audiences but on occasion there is evidence that some jurors and legal professionals were confused about the ambiguity of such linguistics.<sup>30</sup> Not surprisingly the neutrality of this language served to deny any active female sexuality reflecting and promoting society's dominant norm of female passivity and reinforcing the complainant's expected ignorance of matters sexual. However, words like 'ravish' and 'seduce' could also blur the distinction between seduction and violation, and between violation and violence, so they need to be carefully construed in relation to the other established facts of the case.

Reference to the law and legal provisions could be equally ambiguous requiring judgments to be made about the actual offence committed and relevant statutory provision charged. Indictments and charges tended to be drafted in the victim's own words or by a magistrate's or prosecuting counsel's interpretation of what she had

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<sup>30</sup> See Kim Stevenson, 'Taking Indecent Liberties: The Victorian Encryption of Sexual Violence,' in Judith Rowbotham and Kim Stevenson (eds.), *Criminal Conversations: Victorians Behaving Badly* (Ohio State University Press, 2005), pp.232-246. For a more general survey see Deborah Cameron and Don Kulick, *Language and Sexuality* (Cambridge University Press: 2003).

told him. For example, newspaper reports confirm that in the 1850s prosecutors tended to use the phrase 'to ravish' meaning to sexually assault, and 'violently ravish' meaning to rape. Distinctions between actual rape and attempted rape can be blurred (not least because the victim might not have understood the difference or was unable to effectively articulate it) and either might be referred to as 'unlawful carnal knowledge,' attempted rape,' 'assault with intent to commit a felony,' 'assault with intent to ravish,' and even more problematically 'indecent assault.' Equally these could refer to the modern equivalent of assault by non-penile sexual penetration contrary to section 2 Sexual Offences Act 2003. Likewise the Victorian equivalent to 'sexual assault' under section 3 of this Act might have been labelled as 'attempted rape,' 'indecent assault' and, particularly if the victim was a young girl, 'felonious assault,' 'gross indecency' or 'criminal assault.' Surveys of newspaper reportage also illustrate how charges of sexual assault or failed sexual assaults were often downgraded to a common assault or aggravated assault to secure a conviction of some sort. As these could be dealt with at the Police Courts, complainants and their families or representatives were more willing to instigate such actions rather than incur the financial cost and potential undermining of their respectability and reputation by taking the case to full trial.

Press reportage of sexual offences can also provide illustrations and evidence of the operation of gendered and cultural stereotypes within rape trials, particularly the significance of rape myths and society's expected behaviour of victims. Complainants who did not conform to the requisite expectations were less likely to be regarded as credible witnesses. Women assaulted were expected to literally fight back to preserve their modesty, justify why they were in a location that made them vulnerable in the first place, and report any assault immediately and to the first person they met. Many cases turned on the competing strengths of male and female respectability and the outcome was often more predicated on this 'respectability imperative' than the factual evidence presented.<sup>31</sup>

### **3 Using Newspaper Reports of Sexual Offences to Engage Students**

In terms of learning aims and objectives for students engaged with crime history modules using newspaper reports to access prosecutions of sexual offences, and other crimes for that matter, can significantly develop their critical thinking,

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<sup>31</sup> Kim Stevenson, 'The Respectability Imperative: A Golden Rule in Cases of Sexual Assault?' in Ian Inkster (ed.), *Golden Age? Britain 1850-1870* (Ashgate Publishing, 2000), pp. 237-248.

independent learning and research skills in a number of ways. To hopefully inspire colleagues to think about using newspapers in this way the second part of this article presents some example case studies from *The Times*, selected because of the newspaper's pedigree in covering crime news. Each extract is introduced by way of a short summary of the case followed by some suggested themes and interpretive guidance to help students read and understand the report, ideas for specific learning points that they can be directed to investigate further or think about, and potential limitations and factors that both they and tutors might need to be aware of and take into account. These are by no means exhaustive and are intended to be illustrative exemplars only to give a sense of the kind of activities that can be set. Before setting students loose on the *The Times* Digital Archive (Gale), Nineteenth Century British Library Newspapers or the British Newspaper Archive, an amount of preparatory work and reading could conveniently focus on the following points to develop and enhance a broader knowledge and understanding of the wider contextual themes and help students to recognize and identify key aspects. These basically cover the fundamental underlying methodological issues and principles which can then be more intensively analysed through follow up questions and observations. Specific examples and illustrations are highlighted in the interpretative commentary and guidance following the case studies.

### ***Some Suggested Introductory and Preparatory Learning Objectives***

- Enable students to justify references to newspaper reportage as a source but also develop an awareness of its limitations and shifts as informed reporting morphs into modern journalism. Why is a particular title selected? Can further information be found tracking down a local report of the case? Does it appear to be a sensationalist attention grabbing style or an informative and/or educative news item?
- Enable students to refine their research skills when searching newspaper databases. How might they construct string search terms? How can sexual offences be identified within generic attention grabbing headlines such as 'Moral Outrage,' 'Shocking Outrage' or 'Abominable Case' - adding 'violation' as a search term will generally produce better matches. Does such sensationalism operate as a 'public service message' warning readers of the dangers and incidence of a particular crime or violent attack, or to feed the

public thirst for real life crime stories and as a more mercenary mechanism to sell news?<sup>32</sup>

- Engender confidence in interpreting the text and acknowledging that the commentary and reports demonstrate the type of 'conversations' taking place in both the public and legal discourse. Is the crime clearly articulated? What difficulties are there with the language used? Is it desexualised, anodyne, euphemistic? If so, why? Might it explain the subsequent outcome? What problems can this present for modern researchers?
- Consider the prevailing societal and cultural norms especially in respect of gender. In the courtroom the traditional legal doctrines and formal legal rules in relation to the interpretation and application of the law are apparent on the surface; but underneath the informal cultural rules and norms of gender stereotypes, respectability and the inferior position of women were highly influential. How was the hypothetical 'perfect victim' expected to react in the circumstances? To what extent did the victim in the case meet this expectation? Can the comparison explain, at least in part, the outcome?
- Students need to be cautioned about the sensitivity of the subject matter and feel comfortable in expressing their views and opinions. One way of doing this could be to generate discussion to identify how current myths and stereotypes that permeate rape and sexual offences (see Rape Crisis Federation webpage<sup>33</sup>) emanate from and echo the gendered expectations in Victorian cases to help them appreciate the cultural origins of rape mythology.
- Develop their understanding of the criminal justice system including arrest, committal, trial procedures, due process, legal terminology and the role of judge, counsel, jury, magistrates etc. as appropriate. Who is responsible for initiating prosecutions especially before the establishment of any Public Prosecutor in 1885? What are the financial costs and implications for a prosecutor and defendant?

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<sup>32</sup> Regarding such sensationalism students could be directed to read Rowbotham et.al., *Crime News in Modern Britain*, ch.2.

<sup>33</sup> Click on 'Rape Myths' then links to 'Why Rape Myths Exist' and 'Common Myths'  
<http://www.rapecrisis.org.uk/mythsandfacts2.php>

- Review the range of outcomes available to the court and punishment options including transportation, incarceration with or without hard labour, fines, bind over, ticket of leave and acquittal.
- Encourage cross-referencing to other sources to confirm the legal definition of the offence. Is it a statutory or common law crime? What rules of evidence were in existence at the time? What can legal biographies and commentaries add? For example, it was common for Victorian lawyers and judges to write their memoirs.

#### 4 Sample Case Studies

##### ***Case Study One: an attempted group rape?***

The case of *R v Parker, Witcher and Gomm* reported in *The Times*, 24 October 1850, is a typical example of a newspaper court report of a case heard at the Old Bailey. The extract is detailed and vividly portrays the incident from the prosecution's perspective as virtually a straight narrative of the testimonies and arguments as presented to the jury. It would have been written by a lawyer-reporter employed by *The Times* and therefore has considerable legal validity and can be regarded as a reliable source.

*The Times*, 24 October 1850

Central Criminal Court, Oct. 23

THIRD COURT

(Before the COMMON-SERJEANT)

Thomas Parker, 21, Thomas Witcher, 21, and Absolam Gomm, 21, all described as labourers were indicted for assaulting Matilda Atlee with intent to ravish her. Mr. Payne prosecuted and Mr. Ballantyne defended Gomm and Parker.

Mr. PAYNE having stated the case called:

the Prosecutrix, a well-looking, respectably dressed, modest mannered girl, stated that on the afternoon of the 2d inst. She left her home at Hounslow to go to Isleworth, and as she went out Parker spoke to her in a most offensive manner, which she took no notice of but continued on her road, and he left her. She then went to Isleworth church, and on her return home, through the fields was met near a stile in a secluded spot by Parker, who asked her for some money, and she told him she had none to give. He then caught hold of her, when she struggled hard with him and begged he

would let her go as she was a married woman. He, however, refused to listen to her entreaties, and continued to endeavour to throw her down. She continued to scream and struggle with him when the other two came up and took hold of her. She was then struck a violent blow by one of the party, which deprived her of her senses and when she recovered, which was not until some time afterwards, she found she had been carried into another field some distance from the spot...her clothes were much torn and thrown up in an indecent manner, but whether any further liberties had been taken with her she was unable to say. She was for some time in a fainting state, but when she had sufficiently recovered also hastened home to her mother and instantly went to a surgeon, and then to the police station, and made known the outrage that had been perpetrated upon her.

Mr. Chapman, a surgeon, proved that he had examined her, but was unable to say that any outrage beyond a common assault had been committed. Prosecutrix was still very ill. Sergeant Scotney said he arrested the prisoners the same evening at a public house at Hounslow.

Other evidence was given to show that the three prisoners had been seen going towards the field where the outrage was perpetrated about the time, and they were also heard at a public-house laughing about the occurrence.

Mr Ballantyne said he should not deny that a common assault had been committed. The COMMON-SERJEANT said that as it was difficult to say what the extent of the actual offence committed was he should recommend the jury to find them guilty of assault. They did and sentenced them to 12 months imprisonment each.

### Interpretation

*Nature of Crime:* This case illustrates the difficulties of identifying exactly what sexual offence was committed as the prosecution, relying on the complainant's evidence, was unable to articulate it clearly to the jury. The charge on indictment 'for assaulting Matilda Atlee with intent to ravish her' suggests this was an attempted group rape or at the least a serious sexual assault. It is not obvious whether penile penetration in fact occurred but there is a clear use of physical violence (*actus reus*) and intention of purpose (*mens rea*) with a view to enabling forced intercourse when Matilda is held down and then struck a violent blow. There is virtually no literature on the historiography of group rape except in the context of war crimes but, by combining

national and local newspaper reports, the author found further illustrations of the prosecution of Victorian group rapes, particularly in rural and mining communities of the south-west.<sup>34</sup> Students could consider how, where and why such crimes occur, and the likelihood of identifying the perpetrators responsible.

*Legal Professionals:* The judge, the Common-Serjeant, is not named as it would be presumed he was known, students could cross-reference using other sources to identify him, the role of the Common-Serjeant and the Central Criminal Court. Likewise biographic information and further newspaper searches could flesh out legal characters such as defending counsel Mr Ballantine (his name was often spelt wrong), a Sergeant-at-Law and regular defender of men charged with sexual offences who held some fairly misogynistic views as evidenced in his autobiography.<sup>35</sup>

*Gender Issues:* Pretty girls like Matilda ‘a well-looking, respectably dressed, modest mannered girl’ were more likely to be respectable, pure and chaste, the fact she was attending church also confirms this. She ‘struggled hard’ and then ‘continued to scream and struggle’: this reinforces the stereotypical expectation that respectable girls would fight back, to the death if necessary, to preserve their honour.<sup>36</sup> Matilda also found it difficult to articulate what actually happened to her during her testimony. A factor to consider here is the lack of language and words available to express any sexual act, consensual or otherwise: ‘whether any further liberties had been taken with her she was unable to say.’ It is likely that her knowledge of sexual matters was insufficient for her to even understand exactly what had happened as respectable ladies should not know of such things. Expected to remain virginal until marriage they should have little conception of the nature of sexual intimacy. After the Bowdlerization and censure of elements of the English language perceived to cause moral offence at the start of the nineteenth century, there were very few words that respectable women could use and certainly not any that were sexually explicit. Hence the vagueness from all concerned about whether an ‘outrage’ had been committed at all.

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<sup>34</sup> Kim Stevenson, “‘She got past knowing herself and didn’t know how many there were’”: Uncovering the Gendered Brutality of Gang Rapes in Victorian England,’ *Nottingham Law Journal*, 18(1) (2009), pp.1-17.

<sup>35</sup> See *Serjeant Ballantine’s Experiences* (Bentley, 1883), p.70.

<sup>36</sup> Stevenson, ‘The Respectability Imperative,’ pp.237-248.



*Evidential Requirements:* As well as conforming to stereotypical expectations of how a woman should react to any sexual violation, judges and juries would also look for independent corroborating evidence to substantiate and prove her allegation, and assess whether her behaviour and actions were consistent with those of the hypothetical 'ideal' victim. The fact that her clothes were 'much torn and thrown up in an indecent manner' corroborates Matilda's claim that this was an unprovoked attack and that she resisted; the 'violent blow ...deprived her of her senses' confirms the physiological impact of the assault and explains why she may not have been able to remember all the details; that 'She was for some time in a fainting state' is a euphemism for the effects of the attack emphasizing the expectation that genuine victims in such circumstances would automatically pass out or temporarily collapse from the shock of the violation. The fact Matilda 'hastened home to her mother and instantly went to a surgeon, and then to the police station' powerfully corroborates her claim in that she made an immediate complaint, any delay or hesitation could be suggestive of a false or fabricated allegation. The surgeon was 'unable to say that any outrage beyond a common assault had been committed', even today as recent research by Kelly illustrates,<sup>37</sup> juries are more likely to be convinced that rape occurred if there is medical evidence of bruising or injuries around the genitalia, here there appears to have been some mild bruising or reddening of skin perhaps where the men held her down but insufficient to support any attempt of forced penetration

*Outcome:* The judge advised the jury to convict the accused for a common assault rather than a sexual offence because of the ambiguity of the complaint despite the complainant conforming absolutely to stereotypical expectation. Students could be asked to consider the implications of this to the individuals involved especially as a defendant was not permitted to give evidence on his own behalf until the Criminal Evidence Act 1898, and whether 12 months imprisonment was an appropriate sentence. Follow up work could analyse how such outcomes can affect our understanding of the incidence of sexual offences during the Victorian era or compare the subsequent statutory provisions enacted in the Aggravated Assaults Act 1853 and the Offences Against the Person Act 1861 to see whether these would have made any difference to the result.

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<sup>37</sup> Louise Ellison and Vanessa Munro, 'Reacting to Rape: Exploring Mock Juror's Assessments of Complainant Credibility,' *British Journal of Criminology*, 49(2) (2009), pp.202-219.

**Case Study Two: a plea-bargain**

Two full columns covered the case of *R v Florence Driscoll* published 26 October 1853 which is an example of a plea-bargain where the initial charge of attempt carnal knowledge is dropped by the prosecution on the understanding a conviction for common assault is virtually guaranteed. The complainant's credibility is inextricably linked with the party she attended and allusions are made to the possibility that she is a prostitute, the judge has some sympathy with the complainant but the resulting conviction for common assault is a convenient compromise all round.

*The Times* Oct. 26 1853

Middlesex sessions Oct. 25

(Before Mr. Serjeant Adams ASSISTANT-JUDGE)

Florence Driscoll, aged 23 was indicted for unlawfully attempting to feloniously carnally know and abuse Emma Gooding. There were also counts in the indictment charging him with indecent and common assault.

Mr Parry appeared for the Prosecution; Mr O'Brien for the defence.

The prosecutrix, who is a young married woman, stated that she resided with her brother... had been a waitress at the Bell Tavern, Doctor's commons, and before that had been in service for 12 months. At 3 o'clock on the morning of Monday 3<sup>d</sup> October she was returning home from a party. In the Commercial Road, the prisoner who was on the opposite side, crossed over to her and putting his arm around her neck, tried to kiss her. She told him to leave her alone or she would scream for protection. She got away from him a little distance, but he ran after her and got her against a wall. The prosecutrix then detailed the conduct of the prisoner, which was of an indecent character, and stated that she tried to push him away, but was unable to do so. She screamed out 'murder' and 'Police' but he held her there for nearly two minutes until a policeman came and pulled him away.

Cross-examined the party was at No.2 Caroline Street. Her sister was there and some other young women, and a young man. She did not know the name of the persons who gave it.

A juror inquired, through the court, whether there was a bed in the room, which the prosecutrix denied.

William Storey, 149, K, stated he heard the screams and found the prisoner with his arm around the prosecutrix's neck ...[and that on arrest] the prisoner said to her 'Why

did you take my money?' but she denied it. Storey said he did not know the house but it was a respectable street.

Some conversation then took place between Mr Parry and Mr O'Brien ... which resulted... in the case only going to the jury on the count of common assault.

The ASSISTANT-JUDGE having summed up, a juror wanted the character of the house inquired into, as it might corroborate the truth of the prisoner's statement about giving the prosecutrix money.

Mr O'Brien urged that the prisoner had always borne a good character.

Mr Parry thought the prosecutrix had brought all that happened on herself by her improper conduct in stepping out so late. At the same time the prisoner was guilty of a wanton act and ought to be punished but he did not wish to press hardly against it.

The ASSISTANT-JUDGE said that women must be protected, and although there had been a number of circumstances in the case which might require explanation, they hardly affected it, so far as regarded the position of the prisoner. The court would not deal hardly with him, sentenced imposed one month.

*Nature of Crime:* The charge of 'unlawfully attempting to feloniously carnally know and abuse Emma Gooding' is complicated but basically refers to an attempt to have sexual intercourse without consent with two alternative counts of indecent assault and common assault. Clearly some form of indecent conduct had occurred, 'the prosecutrix then detailed the conduct of the prisoner, which was of an indecent character,' the jury therefore hear the more explicit facts but the reporter considers them unsuitable for publication in the press.

*Legal Professionals:* 'Some conversation then took place' between opposing counsel resulting 'in the case only going to the jury on the count of common assault', this implicitly denotes that the two barristers agreed to a plea-bargain to the lesser charge.

*Gender Issues:* The jury are clearly suspicious that Emma may be a prostitute or was trying to blackmail Driscoll by threatening to make a false allegation of sexual assault unless he paid her money. Hence their repeated questions to establish whether the party was at a house of ill-repute, despite Constable Storey asserting it was on a respectable street. The origins of jury trial are demonstrated by such direct questions, something that modern jurors are no longer permitted to do. Mr Parry, for the defence, commented that 'the prosecutrix had brought all that happened on herself

by her improper conduct in stepping out so late', he is implying that it was her fault as her behaviour, in walking out so late and unaccompanied by any male protector, in this case her husband, was not that expected of a respectable young married lady. Parry also attempts to keep the jury on side when he says 'the prisoner was guilty of a wanton act and ought to be punished but he did not wish to press hardly against it.' Translation - the prisoner will not waste the jury's time by denying he did anything wrong but is prepared to admit to a common assault.

*Outcome:* The judge recognizes that an assault of some type took place in his comment that 'women must be protected', but in sentencing Driscoll to just one month imprisonment hints that Emma was partly to blame

**Case Study Three: the 'respectability imperative'**

*R v Daly* neatly illustrates the competing strengths of respectability between the two parties, especially as the defendant was able to call on witnesses to testify to his respectability whereas the complainant had no equivalent contacts, unsurprisingly the (all male) jury was more willing to believe the defendant.

*The Times* 9 July 1860

Central Criminal Court: 8 July

Peter Daly, a respectable-looking middle-aged man in the service of HM Customs, surrendered to take his trial upon an indictment charged with assault on Sally Hodgson, with intent to commit a felony

Mr F H Lewis conducted the prosecution; Mr Sleigh appeared for the defendant.

The prosecutrix in this case was a respectable young married woman and it appeared that her husband was at sea, she kept a small shop in Victoria docks where she sold cigars and articles of haberdashery. According to her evidence ...he came to her shop, went into the back room where she was seated upon a sofa, and, assaulted her in a most indecent manner. The struggle was stated to have continued for more than an hour. The prosecutrix gave information immediately of what had taken place, but the defendant was not taken into custody until five or six days afterwards and it appears that when he was first shown to the prosecutrix she stated that he was not the man. She now, however, swore positively as to his identity...but did not immediately recognise him later because he was differently dressed. And her evidence as to his identity was strongly confirmed by the fact that during the struggle she tore the coat the defendant was wearing and such a coat ...was found at the defendant's lodgings.

Mr. Sleigh made a powerful appeal to the jury...particularly pressing upon their attention the fact that of the prosecutrix having distinctly stated in the first instance he was not the man who had assaulted her. He called a number of highly respectable witnesses who gave the defendant an excellent character for morality and good conduct.

The RECORDER [Russell Gurney QC] having summed up, the jury, after a short deliberation, returned a verdict of *not guilty*. There was an attempt at applause when the verdict was declared, but it was repressed by the officers of the court.

*Nature of crime:* The charge of assault with intent to commit a felony suggests that a physical assault has occurred but as with Case Study One this was actually an attempted rape. Assaulting her in 'an indecent manner' is likely to be a euphemism for a sexual assault but again the reporter is not prepared to provide more explicit detail.

*Gender issues:* The defendant's status of male respectability and as a highly regarded professional is established in the first line of the report followed almost immediately by reference to the complainant as a respectable young married woman. From the beginning the lawyer-reporter is highlighting the competing gender norms of the 'respectability imperative' demonstrating how important this was in many trials at this time.<sup>38</sup> Keeping a small shop in the docks area and selling tobacco might possibly suggest some involvement in prostitution,<sup>39</sup> but the fact that Sally fought back for 'over an hour' overrides any such insinuation showing she did all she could to preserve her honour. Mr Sleigh for the defence counters this with a 'powerful appeal' reminding the jury of the defendant's social status and excellent character, he then calls a number of highly respectable male witnesses seeking to convince the jury that the defendant is more respectable than the complainant. Female complainants rarely had equivalent access to such testimonials outside their immediate family.

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<sup>38</sup> See Stevenson, 'The Respectability Imperative'; D'Cruze, *Crimes of Outrage: Sex, Violence, and Victorian Working Women*.

<sup>39</sup> See Walkowitz, *City of Dreadful Delight*.

*Evidential Requirements:* There is a clear emphasis on the reliability of the complainant and her evidence both in terms of the doctrine of recent complaint<sup>40</sup> and confirmation of the defendant's identity.

*Outcome:* The jury are persuaded as Daly is found not guilty, his supporters welcome the decision and start to clap but the court official quickly 'represses' such applause to maintain the integrity of court.

#### ***Case Study Four: shifts in reporting style***

In contrast to the first extracts from the 1850s-1860s there are subtle differences with the style of this reportage suggesting that there is not necessarily a fully trained legal hand writing it. From a legal perspective the jury are told the charge must be either proved or disproved without the option of lesser alternatives, Justice Denman's comment at the end seems to be implying that the correct charge should have been attempted rape as this would more likely have secured a conviction. The reporter seems to be aware of the key comments made by Denman and the defence barrister Mr Cooper but there is more a sense that he is repeating the emphasis placed by the speakers on these statements rather than recognising their significance in the context of the case. The narrative is therefore more a summary of what the reporter witnessed than an accurate legal account of what took place as illustrated in Case Studies Two and Three .

*The Times* Nov 25, 1876

CENTRAL CRIMINAL COURT: Nov. 24

OLD COURT

(*Before Mr. Justice DENMAN*)

Joseph Tidy, 19, a labourer, was indicted for rape. Mr Gill appeared for the prosecution; Mr Cooper at the request of the learned Judge undertook the defence Susan Mann said on the afternoon of Sunday 6<sup>th</sup> August she was going to visit her mother at Erith. That was at about 3 o'clock. She had to cross some fields, and as she did so, the prisoner, who was behind her, put his arm around her waist and kissed her. She stepped over some strawberry plants to avoid him, but he followed her and pulled her back by her dress. She tried to get out of his way upon which he threw her backwards upon the ground. She struggled and got up, upon which he threw her on the ground backwards. She screamed and he put his hand over her

<sup>40</sup> Now finally dismissed by the judiciary as a stereotypical rape myth see *R v D(JA)* [2008] EWCA Crim 2557.

mouth and committed the offence with which he was charged. She became faint and on coming round, she screamed again, upon which two gentlemen came and lifted her up. Upon that the prisoner walked away. He had been half an hour with her. One of the gentleman took her to a house close by, and afterwards went to the police station and gave a description of the prisoner. She had seen him once before and knew him by sight. She screamed and called 'Murder' until assistance came, but that was not from the farm. She was 15 years of age.

Witness Thomas Titmouse, a labourer in the Royal Arsenal, heard a woman scream 'Murder' and saw the prisoner throw the young girl down twice, upon which witness immediately ran forward to them. He had to run about 100 yards. She was exhausted when he got to the spot and blood was running from the sides of her neck. On witness appearing the prisoner ran away. He had a black eye; witness did not follow him; the girl was exhausted and he assisted her to the nearest house. She was then all of a tremble; blood was oozing from the sides of her neck where the prisoner had pressed her with his knuckles... she immediately fainted.

Mr Thomas May, a surgeon, examined her at 6 that evening and found her underclothing stained with blood, and her dress very much disarranged. She walked with evident pain and what had been done must have been done with great muscular force.

Police Constable Darley spoke to finding the prisoner lying under a hedge adjoining that where the outrage had occurred, he replied he had done nothing wrong. He had been drinking. On being charged with rape he said he knew nothing about it.

Mr Justice Denman said, "not only must the complainant have so behaved as to make resistance, but the prisoner must know perfectly well that he was acting against her will."

For the defence Mr Cooper told the jury- 'there is no such other offence known to law that is so easily charged and so difficult to disprove as rape.' He reviewed the circumstances as they had come out in evidence, dwelt on the natural resistance which a woman was capable of making to preserve her chastity and submitted that on a review of the evidence her conduct left much doubt as to whether she had or had not been a consenting party.

Mr Justice Denman, paying a passing compliment, by the way, to Mr Cooper for the manner in which the defence had been conducted ...told jury that unless they could arrive clearly at the opinion that the prisoner had violated the prosecutrix they ought not to find him guilty of rape, though he might have attempted to commit that offence. The jury in the result *Acquitted* the prisoner.

*Nature of Crime:* In this case the indictment is clear, Tidy is charged with rape but is 'unrepresented' indicating he is unlikely to have the means to pay for counsel, instead the court appoints a barrister to represent him. Students might explore this further by examining the Prisoners' Counsel Act 1836 and the Poor Prisoners' Defence Act 1903.

*Reporting Style:* The style is more note based and rather clumsy with short phrases and highlights rather than fully constructed sentences. The visual detail is almost unnecessarily vivid: 'she stepped over some strawberry plants'. The trial process is adhered to in terms of the order of the witnesses presented, but there is some repetition and, for *The Times*, a tendency towards more emotive and melodramatic elements: 'blood was running from the sides of her neck.... She was the all of a tremble; blood oozing from the sides of her neck where the prisoner had pressed her with his knuckles ... she immediately fainted.'

*Gender issues:* Such sensationalism verifies that Susan stereotypically conformed with Mr Justice Denman's exhortation that, 'not only must the complainant have so behaved as to make resistance, but the prisoner must know perfectly well that he was acting against her will.' The onus falls on the complainant to ensure that the defendant could not be 'mistaken' about her non-consent, corroborated here by the witness testifying that she was bleeding profusely. Unfortunately Mr Cooper, for the defence, successfully casts a doubt in the minds of the jury: 'there is no such other offence known to law that is so easily charged and so difficult to disprove as rape.' His assertion, reiterating Sir Matthew Hale's famous seventeenth century maxim that rape is 'an accusation so easily made', (a pronouncement that it made difficult to secure rape convictions in the past) is composed to good effect and one the students could be referred to.<sup>41</sup> Mr Cooper also 'dwelt on the natural resistance which a

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<sup>41</sup> 'It is true that rape is a most detestable crime and therefore ought feverly and impartially to be punished with death; *but it must be remembered that it is an accusation easily to be made and hard to be proved* – and harder to be defended by the party accused, tho – never so



woman was capable of making to preserve her chastity': translated - a virgin will do her utmost to resist – did Susan do enough? The judge approves the tactics of the defence counsel, 'paying a passing compliment, by the way, to Mr Cooper for the manner in which the defence had been conducted ...' illustrating the inherent masculine prejudices of the all male courtroom and adversarial legal system. Students could be directed to further explore the complexities of masculinities, gender and respectabilities with reference to the work of D'Cruze and Wiener.<sup>42</sup>

*Evidential Requirements:* The doctor testifies that her 'underclothing was stained with blood' which is unlikely to have come from the blood on her neck. This is strongly circumstantial evidence that penetration was certainly attempted and more likely fully forced, confirmed by the fact that complainant 'walked with evident pain' and that 'muscular force' was used.

*Outcome:* Tidy, who had been drinking, was acquitted despite the cumulative, independent and corroborating evidence that supports Susan's story. Her age - 15 years – is almost patronisingly dismissed at the end of a very long paragraph. Students could follow this up by finding out the age of protection/consent and consider whether this may have exerted any influence on the decision. Ultimately Mr Justice Denman allows the jury to acquit with a clear conscience, unless they are unequivocally of the opinion that full penetration occurred.

## Conclusion

This article has demonstrated how student engagement with newspaper court reports can overcome the paucity of other sources to facilitate their learning and understanding of how cases involving sexual violation and gender were prosecuted and disposed of in the nineteenth century. As might be expected, it is much easier to access and utilise contemporary media reportage of sex crimes for the modern era, not a day passes without one or more reports listed on current news updates and feeds. Compared to the available digitized records of nineteenth century newspapers there is currently an overwhelming amount of newsprint and other media formats

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innocent.' Sir Matthew Hale, *History of the Pleas of the Crown* vol.1 (Professional Books, 1936), p.636 [published posthumously in 1736].

<sup>42</sup> Shani D'Cruze, 'Sex, violence and local courts: working-class respectability in a mid-nineteenth-century Lancashire town', *British Journal of Criminology*, 39(1) (1999), pp.39-55; *Crimes of Outrage: Sex, Violence, and Victorian Working Women*; Wiener, *Men of Blood*.

reproducing information about the majority of sexual offence prosecutions initiated in England and Wales. This is exacerbated by the recent celebrity child sexual abuse scandals triggered by Operation Yewtree and the Savile Report as well as the phenomenal increase in the creation of online child pornography. But despite the ease with which such contemporary reportage can be produced and read, it often tends to lack the rich and specific legal detail found in nineteenth century newspapers, focussing more on the latest scandal or newsworthy emphasis of the day. Others will no doubt comment upon and justify the quantitative and qualitative methodologies of using contemporary modern media, perhaps in a future retrospective review much as this article has sought to rationalize the use of the Victorian press. Using reportage about sexual assaults, or creating a similar exercise using reports of domestic violence, demonstrates to students not only how news production and representation can promote and reinforce cultural stereotypes and myths exerting influence on juries and legal professionals, but also how profoundly gendered the decision making process of the criminal justice system could be. As Boyle confirms 'Feminists have long recognised that changes in the way we represent violence do not only follow social changes but changes in representation - and interpretation – can also lead the way.'<sup>43</sup>

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<sup>43</sup> Karen Boyle, *Media and Violence* (Sage, 2005), p.xiv.